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Citizens Utility Board)

00-0620

Request for an investigation into the current)
structure of the Nicor Customers Select Pilot)
Program and the Proposed Changes filed)
August 10, 2000, Meet the Public Interest)
Standards and Other Requirements Set Forth)
in the Public Utilities Act. 220 ILCS 5/4-101;)
220 ILCS 5/8-101; 220 ILCS 8-102.)

Northern Illinois Gas Company)
d/b/a Nicor Gas Company)

(cons.)

Proposed changes to Riders 15 and 16)
and related provisions.)
(Tariffs filed on August 11, 2000))

00-0621

REPLY BRIEF OF
NORTHERN ILLINOIS GAS COMPANY

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On March 23, 2001, Staff, the Citizens Utility Board (“CUB”) and the Cook County State’s Attorney’s Office (“Cook County”), the People of the State of Illinois (“the People”)¹ and the National Energy Marketers Association (“NEMA”) submitted their Initial Briefs in this proceeding setting forth their positions with respect to Northern Illinois Gas Company’s (“Nicor Gas” or “the Company”) proposed expansion of the Customer Select Pilot Program (“Customer Select” or “Program”). Staff and these Intervenor, with the exception of The Peoples Gas Light and Coke Company (“Peoples Gas”), argue that the Commission should modify Riders 15 and 16 before allowing Nicor Gas to expand Customer Select to all customers within its service area. Nicor Gas’ position is that the Commission should allow the Company to expand Customer Select, so that all of Nicor Gas’ customers can benefit from supplier choice, without modification other than those proposed or accepted by Nicor Gas in this proceeding.

Staff and the intervening parties raise numerous issues in their Initial Briefs, some of which the Company believes are beyond the proper scope of this proceeding. To the extent that this Reply Brief does not specifically respond to an issue raised in another party’s brief, Nicor Gas relies on the position stated in its testimony and Initial Brief in this proceeding. Failure to address an argument should not be construed as a waiver of the position taken by the Company in testimony and its Initial Brief.

I. THE COMMISSION SHOULD AUTHORIZE EXPANSION OF CUSTOMER SELECT TO ALL CUSTOMERS

GCI argues that the Commission should not expand Customer Select to all residential customers because they do not have a “meaningful” choice of suppliers. CUB/Cook County Init.

¹ CUB, the People and Cook County are collectively referred to as “GCI”.

Br. at 6-7; the People Init. Br. at 6-7. The evidence in this case however, demonstrates that customers have, in fact, experienced meaningful choice even under GCI's definition of that term.

CUB and Cook County assert in their Brief that:

Meaningful customer choice maximizes consumer welfare; that is, consumers are better off either because they value the services they are receiving more highly than services that they received before, or because they are receiving the services that they received before at a lower price, or both.

CUB/Cook County Init. Br. at 6 (quoting *Market Analyses of Public Utilities: The Now and Future Role of State Commissions*, Robert E. Burns, *et al.*, July 1999).

However, as discussed in Nicor Gas' Initial Brief (pp. 12-18), the Company's customer surveys clearly show that customers "value the services they are receiving" with Customer Select more highly than the services they received before the Program. Ninety percent of the customers participating in Customer Select would participate in the Program again. Nicor Gas Ex. D, p. 5 (Harms Direct); Nicor Gas Ex. E, p. 26 (Harms Rebuttal). Moreover, 60 percent of surveyed customers eligible for Customer Select, but not participating, believe that they have benefited from supplier choice. Nicor Gas Ex. D, p. 5. This evidence objectively demonstrates that CUB and Cook County are wrong in claiming that "consumers do not believe that Nicor's current proposal is structured to produce the long-term benefits competition should produce." (CUB/Cook County Init. Br. at 10). In fact, exactly the opposite is true.

Furthermore, a good way to gauge empirically whether participating customers are dissatisfied with Customer Select is to look at the number of complaints received by the Commission, the People, and/or CUB. It is clear that this was the rationale behind CUB's and the People's introduction into evidence of approximately 87 alleged customer complaints. As demonstrated by Nicor Gas witness Harms, however, about half of these "complaints" are not

complaints at all, but rather requests for information about Customer Select, and neither the People nor CUB can credibly dispute this fact. Instead, the People now back-pedal, arguing that the Commission should focus on the testimony of GCI's witnesses and their experiences with programs in other states, rather than the "minimal number" of customer complaints regarding Customer Select. The People, Init. Br. at 22. Further, viewed in the context of the Program as a whole, the number of customer complaints produced by GCI is truly minimal -- out of approximately 2.5 million customer contacts, GCI was only able to produce 36 items that could even arguably be construed as complaints. Nicor Gas Init. Br. at 14; Nicor Gas Ex. F., p. 19 (Harms Surrebuttal). While Nicor Gas would have preferred that there be no complaints concerning Customer Select, the extremely small number of complaints is strong evidence that Customer Select is a good program. This fact is further reinforced by Staff witness Iannello's testimony that the Commission has received few complaints concerning Customer Select. ICC Staff Ex. 3.0, p. 25 (Iannello Rebuttal); Nicor Gas Init. Br. at 14.

CUB and Cook County are also wrong when they claim that the record does not reflect significant customer savings and that any savings residential customers may have experienced under Customer Select were "by chance." CUB/Cook County Init. Br. at 13-15; GCI Ex. 2.0 at 11. Contrary to CUB's and Cook County's argument, the record demonstrates that *all* residential customers participating in Customer Select and receiving gas supply from Nicor Energy experienced lower prices on an aggregate basis than they would have received from Nicor Gas. Nicor Gas Init. Br. at 14-15; Hearing Examiners' Ex. 1 (Nicor Energy Responses to DR-2 and DR-5). Nicor Energy's customers experienced these savings regardless of whether they chose the lock-in rate of 26.5 cents per therm (and even though the market never reached a level where the "lock-in" could become operative) or a variable rate.

In sum, contrary to the arguments of GCI, the evidence shows that, overall, Customer Select has succeeded in providing customers with meaningful and valued choice.² Additionally, it is important to note that Staff endorses expansion of Customer Select to all customers, recognizing that Customer Select “provide[s] customers with an important choice and opportunity to benefit from an alternative to traditional sales service. Staff maintains that the Customer Select Program has been an overall success.” Staff Init. Br. at 4-5. Accordingly, the Commission should grant Nicor Gas’ proposal to expand Customer Select to all customers within its service area.

II. PROPOSED CHANGES TO RIDER 15

Various parties have raised three issues with respect to Rider 15: (1) whether suppliers should be permitted to issue a single bill covering both their charges and Nicor Gas’ transportation charges; (2) whether customers should be liable for obligations of a defaulting supplier; and (3) how funds received from third parties for the benefit of a customer should be allocated. As discussed below, the Company has agreed to remove from Rider 15 the language regarding defaulting suppliers, but the single billing and allocation of funds issues remain contested.

A. The Commission Should Not Permit Single Billing by Suppliers

Staff and NEMA oppose the Company’s proposed revisions to Rider 15 which would provide that Customer Select customers “shall not be allowed to designate their supplier as the bill recipient for bills rendered by the Company” and the related provision in the Standards of

² GCI’s arguments that Customer Select should not be expanded because the Commission does not presently regulate gas suppliers are addressed in Section IV.C.

Conduct in Rider 16 that requires a supplier to “refrain from changing or causing to be changed, the Customer’s mailing address to a location accessible to the Supplier.” Nicor Gas Ex. AEH-4, pp. 3, 11. Specifically, Staff recommends that the Commission require Nicor Gas to allow suppliers to issue a single bill to customers that would include both the supplier’s charges and Nicor Gas’ transportation charges. According to Staff, single billing can be accomplished through agency arrangements between suppliers and customers and/or through a single billing tariff approved by the Commission. Staff Init. Br. at 7. For the reasons discussed below and in the Initial Briefs of the Company and Peoples Gas, the Commission should reject Staff’s and NEMA’s proposals to require the Company to offer single billing by suppliers.

At the outset, it is important to recognize that customers who participate in Customer Select *are* entitled to receive a single bill issued by Nicor Gas if their suppliers agree. *See* Rider 15, Nicor Gas Ex. AEH-4, p. 4. The issue in this proceeding, *therefore*, is not *whether* customers may receive a single bill but *whether* suppliers may issue a single bill.³

1. Enactment Of The Electric Service Customer Choice And Rate Relief Law Of 1997 Confirms That The Commission Does Not Have Authority To Require Nicor Gas To Offer Single Billing By Suppliers.

In 1997, the General Assembly enacted the Electric Service Customer Choice and Rate Relief Law. 220 ILCS 5/16-101 *et seq.* (hereinafter “Choice Law”). Among other things, the Choice Law requires electric utilities to offer single billing service to Alternative Retail Electric Suppliers (“ARES”). *See* 220 ILCS 5/16-118(b). One of the primary themes of Staff’s case is that the Commission should now require Nicor Gas to offer single billing to Customer Select

³ In fact, the Commission has not received any informal customer complaints regarding single billing. Nicor Gas Rebuttal Ex. AEH-5 (CCSI-1).

suppliers because the General Assembly must have recognized the benefits of single billing when it enacted the Choice Law. Staff Init. Br. at 14; ICC Staff Ex.1.0, p. 22 (Iannello Direct).

What Staff fails to recognize, however, is that whatever the General Assembly may have thought about single billing in the context of electric utilities, it did *not* establish parallel provisions with respect to gas suppliers, even though House Bill 362, which amended the Public Utilities Act (“Act”) by adding Article XVI, *also* contains several amendments to the Act as it applies to gas utilities.⁴ As a matter of law, the omission of any obligation on the part of gas utilities to offer single billing to gas suppliers establishes that the General Assembly affirmatively intended *not* to impose such an obligation. *Illinois Bell Tel. Co. v. Commerce Comm’n*, 203 Ill.App.3d 424, 438, 561 N.E.2d 426, 436 (2nd Dist. 1990) (“the expression of one thing in an enactment excludes any other, even if there are no negative words prohibiting it”); *Bridgestone/Firestone, Inc. v. Aldridge*, 179 Ill.2d 141, 152, 688 N.E.2d 90, 95 (1997) (“[T]he inference that all omissions should be understood as exclusions stands despite the lack of any negative words of limitation.”); 2a N.J. Singer, *Sutherland on Statutes and Statutory Construction*, §§ 47.23, 47.25 at 217, 234 (5th Ed. 1992). And, because the Commission is a creature of statute, it has no jurisdiction or power beyond that expressly conferred upon it by statute. *Commerce Comm’n ex rel. East St. Louis v. East St. Louis & C. Ry. Co.*, 361 Ill. 606, 611, 198 N.E. 716, 718 (1935); *Union Elec. Co. v. Commerce Comm’n*, 77 Ill.2d 364, 396 N.E.2d 510 (1979); *Peoples Energy Corp. v. Commerce Comm’n*, 492 N.E.2d 551, 142 Ill.App.3d 917 (1st Dist. 1986). Consequently, the Commission may not, by its own acts, extend

⁴ H.B. 362 amends various sections contained in Articles III, V, VII, VIII, IX, and X of the Act, all of which apply to gas as well as electric utilities.

its jurisdiction to impose a single bill requirement on gas utilities that the General Assembly declined to impose.

2. Staff's, GCI's, And NEMA's Positions Are Contrary To Sound Policy And Past Precedent.

As discussed in Nicor Gas' Initial Brief, Parts 280 and 500 of the Commission's rules regulate the manner in which gas utilities, such as Nicor Gas, issue bills for service. These rules serve the important policy goals of informing the customer and ensuring public safety. GCI witness Ms. Alexander concedes this. GCI Ex. 4.0, pp. 11-16 (Alexander Rebuttal). Gas suppliers are not yet directly regulated by the Commission and, thus, if a single bill were submitted to the customer by a supplier, the Commission would have no regulatory authority to ensure that these policy goals are met.

Staff was a strong proponent of these goals when it proposed revisions to the Commission's rules governing the Standards of Service for Electric Utilities and Alternative Retail Electric Suppliers in Docket No. 99-0580 ("ARES Rulemaking"). In that proceeding, Staff proposed rules subjecting ARES to the same billing requirements imposed upon electric utilities. *See* 83 Ill. Adm. Code § 410.210. The Commission adopted Staff's proposed rules, stating:

Staff asserts that Section 410.210 recognizes that customers need billing information to make informed choices about their energy providers. Staff states that customers are unlikely to switch suppliers if they cannot determine the components of the bill and the services offered. In response to MidAmerican's position that customers should have the latitude to enter into agreements with their electric suppliers that establish the form and content of the bill, Staff indicates that in the current environment, it is likely that customers may not know exactly what information is needed or useful to make educated decisions about a change in an electric supplier.

Illinois Commerce Commission On Its Own Motion Revision of 83 Ill. Adm. Code 410, Docket No. 99-0580, 2000 Ill. PUC LEXIS 565, *49-50.

In this proceeding, however, Staff inexplicably abandons its prior pro-consumer position by arguing that gas suppliers should be allowed to issue single bills notwithstanding the fact that, unlike ARES, gas suppliers are not subject to the Commission's standards of service, billing, or payment practice rules. Staff merely claims that Customer Select suppliers should be able to offer single billing because Nicor Gas offers this option to non-Customer Select suppliers operating under different transportation tariffs. Staff Init. Br. at 11. But Staff's position simply *ignores* the fact that non-Customer Select suppliers serve large industrial and commercial customers who are sophisticated with respect to gas supply services, and must actively manage the customer's account to ensure that gas supply conforms to the terms of the customer's transportation contract with Nicor Gas. Nicor Gas Ex. E, pp. 16-17 (Harms Rebuttal). By contrast, Customer Select customers are small industrial/commercial or residential customers who, relatively speaking, are less sophisticated with respect to gas supply service,⁵ and thus rely upon Nicor Gas' communications for vital information concerning safety, services and billing. Furthermore, Customer Select suppliers do not have responsibility to actively manage the customer's account, since Nicor Gas informs the Customer Select supplier of the amount of gas it must deliver to the system to match demand and storage requirements for all of the supplier's customers. Nicor Gas Ex. B, p. 6 (Gilmore Rebuttal). Therefore, Staff's attempt to draw an

⁵ Indeed, the only exposure to – or experience with – gas supply service such customers may have is their participation in Customer Select.

analogy between non-Customer Select suppliers and Customer Select suppliers in this proceeding is inapposite and must be rejected.

In addition, as explained in the Company's Initial Brief, the Commission has reviewed this precise issue in the past as part of its review of the Peoples Gas Small Customer Transportation Program in Docket No. 97-0297. There, the issue of single billing was hotly contested and single billing by suppliers was ultimately rejected by the Commission, as it was "very concerned about the information that will be provided to small-volume customers, as compared to customers taking transportation under the Company's pre-Pilot transportation programs *who tend to be more sophisticated utility customers.*" *The Peoples Gas Light & Coke Co.*, Docket No. 97-0297, 1998 Ill. PUC LEXIS 685, *23-24 (Emphasis added); Nicor Gas Init. Br. at 24-25; Nicor Gas Ex. E, p. 16 (Harms Rebuttal).⁶

Similarly, the Commission should reject NEMA's proposal for single billing by suppliers. While NEMA generally endorses Staff's proposal, it argues that, instead of issuing bills in a strict line item format as proposed by Staff, the supplier should be allowed to let the customer choose what information it wants to receive from the supplier. NEMA Init. Br. at 6. NEMA's proposal not only is contrary to the Commission's standards of service rules, but helps to explain exactly why a single billing requirement should not be imposed. Allowing residential customers – relatively unsophisticated and inexperienced with respect to gas supply service in the first place – to tell the suppliers what information should be included on the bill makes no

⁶ It should be noted that Nicor Gas is currently supporting a Commission proposal for a certification requirement for gas suppliers before the General Assembly. If passed, such requirement would bring gas suppliers within the ambit of the Commission's regulation, and the Commission would then have jurisdiction to impose billing requirements on Customer Select suppliers.

sense. As noted above, the Commission rejected a similar proposal by MidAmerican Energy in the ARES Rulemaking, and adopted Staff's argument that "in the current environment, it is likely that customers may not know exactly what information is needed or useful to make educated decisions about a change in an electric supplier." ARES Rulemaking, 2000 Ill. PUC LEXIS 565, *50. The same result is required by the public interest here.

NEMA's claim (Init. Br. at 8) that prohibiting single billing by suppliers would interfere with contractual agency relationships between customers and suppliers should also be rejected. There is no evidence in the record that Customer Select suppliers have entered into agency agreements for purposes of issuing single consolidated bills. Even if there was such evidence, NEMA's argument must fail because the current language in Rider 15 expressly provides that "the Company shall issue its bill for transportation service under this rider directly to the Customer" (Nicor Gas Ex. AEH-3, p. 1), and Nicor Gas' proposed revision to Rider 15 merely clarifies the fact that single billing by the supplier is not permitted. In other words, single billing arrangements between Customer Select suppliers and customers would be contrary to Rider 15, and thus, invalid as a matter of law. *Bloom Township High School v. Commerce Comm'n*, 309 Ill.App.3d 163, 175, 722 N.E.2d 676, 686 (1st Dist. 1999) (utility tariff has force of law); *Phillips Elec. Co., Inc. v. Seko Messenger Serv., Inc.*, 235 Ill.App.3d 513, 517, 602 N.E.2d 62, 64 (1st Dist. 1992) (tariff has force and effect of statute); *Illinois Cent. Gulf R.R. Co. v. Sankey Bros., Inc.*, 67 Ill.App.3d 435, 439, 384 N.E.2d 543, 545 (4th Dist. 1978) (same).

For Nicor Gas, single billing by suppliers is fundamentally a safety issue. Tr. 179-181. As Mr. Harms testified, billing by the Company serves to remind customers of the telephone number to call in case of gas emergencies and suspected gas leaks. Because it is so critical that emergency calls go directly to Nicor Gas, and because customer contact through billing

reinforces this message, the Company opposes single billing by suppliers at this very early stage of unbundling in the residential and small commercial gas market.

B. Charges For Defaulting Suppliers

As discussed in Staff's Initial Brief (at 5-6), the Company has agreed to remove tariff language that would make the customer responsible for a defaulting supplier's obligations to pay Nicor Gas. This uncontested change to Rider 15 is shown in legislative style in Nicor Gas' Initial Brief (at 20).

C. Monies Received From Third Parties

Rider 15 provides that monies received from third parties, such as the Low Income Home Energy Assistance Program ("LIHEAP"), for the benefit of the customer, will be used first to pay the Company's arrears, then the supplier's arrears, next the Company's current charges, and finally the supplier's current charges. Nicor Gas Init. Br. at 25; Nicor Gas Ex. AEH-4, p. 4 of 12. Under Staff's proposal, third party monies would first be applied to the Company's oldest unpaid bill, then to the supplier's oldest unpaid bill, next to the Company's second oldest unpaid bill, then to the supplier's second oldest unpaid bill, and so on until the money is gone. Staff Init. Br. at 15-16. GCI takes the opposite position, arguing that all third party funds should be applied to all regulated charges, past-due and current, and then to supplier charges. GCI Ex. 1.0, pp. 29-30 (Alexander Direct).

The Commission should reject both Staff's and GCI's positions on this issue. While Staff claims that its proposal is "more equitable," it concedes that "service disconnection under Staff's proposal would be more likely." Staff Init Br. at 15-16. Under GCI's approach, it is possible that third party funds would be exhausted after paying all regulated charges, leaving no funds for suppliers. Customers could then be subject to late fee assessment and collection by

suppliers. Nicor Gas' proposal is the best approach, because it equitably ensures that both Nicor Gas and the supplier will receive funds and provides customers more protection from late fees or disconnections. In addition, Nicor Gas' proposal is more consistent with distribution of third party funds in the electric industry than Staff's proposal. Nicor Gas Init. Br. at 25.

D. Summary

For the foregoing reasons, and the reasons explained in Nicor Gas' Initial Brief (at 22-25), Rider 15 should be approved as filed by the Company, with the deletion of the second paragraph of the provision entitled "Charges". Nicor Gas Init. Br. at 20. The proposals of Staff and various parties regarding single billing by suppliers and the allocation of funds received from third parties for the benefit of customers should be rejected.

III. PROPOSED CHANGES TO RIDER 16

In their Initial Briefs, both Staff and GCI argue for changes to the Company's proposed Rider 16. The disputed issues raised by Rider 16 are: (1) supplier fees and charges; (2) OFOs; (3) storage flexibility; and (4) the Standards of Conduct. As explained below, the objections of Staff and GCI should be rejected.

A. Supplier Charges

Nicor Gas has proposed four supplier charges under Rider 16 to cover the costs created by the Customer Select Program. In each case, these charges are less than or equal to the charges that have been in effect since the inception of the Program in 1997 *and* less than or equal to the charges that the Commission approved for Peoples' small volume transportation program in Docket No. 97-0297. Staff takes issue with each of the Company's charges, and proposes alternate levels for three of these charges and an alternate method of cost recovery for the fourth

charge. GCI and the People take the remarkable position that the Company should not impose any charges at all. Each of these positions should be rejected.

1. The \$2000 Application Fee is Cost-Justified and Should be Approved.

Staff devotes nearly nine pages of its Initial Brief to its argument that the Application Fee for suppliers in the Customer Select program should be \$1385 rather than \$2000, as proposed by the Company. Staff Initial Br. at 18-26. Staff takes issue with only two cost components of this fee: the Nicor Gas staff time needed to train employees of suppliers, and the cost involved in updating and revising the training manual. These two disputes account for the difference between the Company's proposed fee and Staff's proposed fee.

a. The Supplier Training Cost is \$960.

Based on over three years' experience with Customer Select, Nicor Gas' witness, Mr. Harms, testified that the Company devotes an average of at least 24 man-hours to training the employees of suppliers. Nicor Gas Ex. F, pp. 3-5 (Harms Surrebuttal). In addition to the initial training for new suppliers, Nicor Gas visits suppliers to provide ongoing education, answer questions, and explain changes in procedures. *Id.*, pp. 3-4; Tr. 86. The high turnover of employees of suppliers makes this ongoing education particularly important. Nicor Gas Ex. F, p. 4 (Harms Surrebuttal). The Company's costs for supplier training were computed by multiplying the 24 man-hours needed by \$40 for a total of \$960.

The evidence further establishes that three different employees of Nicor Gas are needed for this training. *Id.*; Tr. 85. Specifically, an information technology representative discusses issues such as hardware and software requirements and electronic file issues, including description, record layout, transfer, encryption and downloading. A general Customer Select representative addresses the program rules, deadlines, tariff requirements, tariff changes,

contracts and agreements, enrollment and similar issues. In addition, a Customer Select operations representative addresses day-to-day operational issues, supply and storage issues, the nomination and forecasting process, specific account issues, billing inquiries and customer service issues. Nicor Gas Ex. F, p. 4 (Harms Surrebuttal). In all, the Company representatives cover over 1,000 pages of information in their training sessions with Suppliers. *Id.*

Training of new suppliers or new employees of a supplier frequently involves a visit to the office of the supplier by all three Company representatives. Tr. 86. These visits may also involve significant travel time; over the past three years, Customer Select representatives have traveled to Bloomington, Chicago, Westchester, Lisle, and Naperville, Illinois as well as out of state, to meet with suppliers. Nicor Gas Ex. E, p. 4 (Harms Rebuttal).

Notwithstanding the Company's undisputed and unrebutted evidence based on actual experience administering the Customer Select program, Staff takes the position that the Company's costs of \$960 cannot be justified because the Company has not broken down the costs (presumably man-hours) associated with each of the training issues covered with suppliers. Staff Initial Brief, p. 22 ("If no costs can be linked to the 'issues,' Staff cannot agree to Nicor's proposed \$960 costs.") Instead, Staff contends -- without any basis at all -- that the cost of 8 man-hours of training at \$40 per hour (\$320) should be used to calculate the Supplier Application Fee. Staff Init. Br. at 22.

Staff's position is both unsupported and unreasonable. Nicor Gas cannot specify the number of minutes devoted to each possible training issue because its educational program does not work that way. As Mr. Harms explained, Customer Select training covers numerous issues in the supplier manual, and the time spent on each issue varies according to the needs and demands of each supplier. Some individual employees of suppliers have a greater understanding

of the issues and need less training time; others require more time. Tr. 84-85. Some suppliers have significant turn-over of employees and require additional training for the new employees. Nicor Gas Ex. F, p. 4 (Harms Surrebuttal). Again, the issues covered and training time required depends on the job responsibilities and level of understanding of the new employees. Moreover, adequate training of suppliers is essential to ensure that customers have a positive experience and that potential problems are avoided. Nicor Gas Ex. E, p. 4 (Harms Rebuttal).

Nothing in the record or in common sense supports Staff's assumption that training for Customer Select could be accomplished in a total of 8 man-hours per supplier. The only credible evidence in the record confirms that 24 man-hours x \$40, or \$960, is the appropriate cost of the training program. Staff's "alternative" of 8 man-hours x \$40, or \$320, is without any basis and should be rejected.

b. The Cost of the Training Manual is \$100.

The Company's \$2000 Supplier Application Fee includes \$100 per supplier to cover the costs of updating the Customer Select manual. Nicor Gas Ex. E, p. 5 (Harms Rebuttal). Staff contends that this amount should be reduced to \$30 per supplier, which covers only the copying cost of the manual. Staff Init. Br. at 21.

Staff's proposal is patently inadequate to cover the necessary costs, as even Staff acknowledges that the manual will have to be updated and revised to reflect the outcome of this proceeding. Nicor Gas Ex. E, p. 5 (Harms Rebuttal); Staff Init. Br. at 20. Accordingly, the Company's \$100 cost per supplier for the revision and reproduction of manuals should be accepted, and Staff's proposed \$30 cost should be rejected.

c. Summary

Staff has disputed two of the cost components of the Company's Supplier Application Fee -- the cost of training suppliers and the program manual. As explained above, in the Company's Initial Brief (pp. 28-29), and in the testimony of Mr. Harms, the evidence clearly supports the Company's Supplier Application Fee of \$2000.⁷ The same fee level was approved by the Commission for Peoples Gas' small volume transportation program, and for the initial three years of Customers Select. Nicor Gas Ex. E, pp. 5-6 (Harms Rebuttal). Staff's adjustments simply ignore substantial components of the Company's actual costs for no valid reason.

2. The \$200 Monthly Group Charge is Cost-Justified.

Nicor Gas imposes a \$200 Monthly Group Charge for each group of a supplier, to cover the administrative costs incurred in serving the group. Because all suppliers have chosen to combine their customers into a single group, each supplier incurs a single \$200 charge per month. Nicor Gas Ex. D, p. 15 (Harms Direct). Costs covered by this charge include preparation of the monthly group bill, responding to supplier billing questions, and generating and processing daily nominations, forecasting monthly and annual nominations, and processing payments. *Id.*; ICC Staff Ex. 2.0, Attachment 3 (DLS-9). A similar \$200 per month charge was approved by the Commission for the small volume transportation program of Peoples Gas. Nicor Gas Ex. E, p. 8 (Harms Rebuttal).

Staff takes issue with the Company's Group Charge of \$200, claiming that it "may be discriminatory" if a lower cost is incurred for suppliers with fewer group members. Staff Init.

⁷ While Nicor Gas' costs support a Supplier Application Fee of \$2095, the Company has only requested a fee of \$2000. See Staff Init. Br. at 26.

Br. at 30. Staff proposes that a \$100 group charge be applied to supplier groups with less than 10,000 customers. Staff's argument is baseless and should be rejected.

First, Staff's discrimination argument fails because it does not cost the Company less to serve a small supplier group than a large supplier group. Nicor Gas Ex. E, pp. 6-7 (Harms Rebuttal); Nicor Gas Ex. F, pp.5-6 (Harms Surrebuttal), Tr. 93. As Mr. Harms has repeatedly explained, Nicor Gas' experience with Customer Select has been that the staff time required to prepare group bills, forecasts, and nomination information does not vary with the size of the group.⁸ Every group bill, regardless of the number of group members, contains the identical items. See, e.g., Nicor Gas Ex. F, pp. 5-6 (Harms Surrebuttal) and Schedules AEH-1 (Group bill for supplier of 88,000 customers) and AEH-2 (Group Bill for supplier of 31 customers); Tr. 93; Nicor Gas Ex. E., p. 7 (Harms Rebuttal). Since all data is at the aggregate level, supplier questions relating to group bills also do not vary with group size. Tr. 92-93. Accepting Staff's argument would require that the Commission disregard the Company's three-plus year experience in preparing and processing group bills, nominations, and forecasts for Customer Select Suppliers and rely, instead, on Staff's "intuitive" belief (p. 29), assumption (p. 29), "opinion" (p. 30) and "conclusion" (p. 30) that "less cost is associated with smaller groups."

Second, Staff's assumption that \$100 would cover the costs of group administration for groups of less than 10,000 members is without any basis at all. Staff apparently derived its proposed \$100 monthly group charge by assuming that serving a small group would take one-half of the man-hours of a large group (2.5 vs. 5 hours per month). See Staff Init. Br. at 33;

⁸ While electronic processing time does vary with the size of a supplier's group, it is not included in the \$200 group charge cost calculation. Nicor Gas Ex. F, pp. 5-6.

Nicor Gas Ex. F, p. 6 (Harms Surrebuttal). However, nowhere in the record does Staff's witness, Mr. Sweatman, identify where the 2.5 man-hours of alleged savings would occur.⁹ See Nicor Gas Ex. F, p. 6 (Harms Surrebuttal). In fact, if the costs of servicing a group were proportionate to the group size (which they are not), then Staff's flat \$100 charge for all groups with less than 10,000 members would be as discriminatory as the Company's \$200 charge.

Third, Staff's proposal to bifurcate the monthly Group Charge at 10,000 group members has no empirical basis. Nothing in the record support Staff's apparent assumption that 10,000 customers is an appropriate dividing line for the level of the Group Charge to avoid discrimination. Nicor Gas Ex. F, p. 6 (Harms Surrebuttal); Nicor Gas Ex. E, p. 7 (Harms Rebuttal). In fact, Staff admits in its Initial Brief (at 30-31) that it chose 10,000 members as its dividing point for Group Charges only because "a natural dividing point occurs at the 10,000 level." But if smaller groups should be charged a lower Group Charge than larger groups in order to avoid discrimination, as Staff contends, then the distinction between "smaller" and "larger" should be based on actual cost evidence, and not on the happenstance of "a natural dividing point" in group size.

Fourth, Staff's claim that a \$200 Monthly Group Charge "could be considered excessive by smaller suppliers" and thus deter competition, is pure speculation. Staff Init. Br. at 32-33. There is not one shred of evidence in this case that this charge, or any other Supplier charge, has deterred competition.

⁹ The evidence demonstrates, to the contrary, that a \$200 charge must be assessed on each group in order for the Company to recover the costs associated with the group administration. See ICC Staff Ex. 2.0, Attachment 4A (Group administration costs are \$31,000 and revenue with a \$200 charge is \$31,200.) Clearly a \$100 charge for groups under 10,000 would not provide cost recovery.

In short, Staff's proposal to reduce the Monthly Group Charge to \$100 for groups with less than 10,000 members cannot possibly be justified on the ground that it prevents discrimination. The proposed \$100 group charge, as well as the 10,000-member limit for "small" groups, are devoid of any evidentiary or empirical basis, and should be rejected.¹⁰ Staff's mistaken "intuition" that the \$200 Group Charge may be discriminatory should not be substituted for the Company's experience in preparing and processing monthly group bills, daily nominations, and monthly and annual forecasts for suppliers.

3. The \$1 Account Charge Is Cost-Justified and Should be Approved.

Nicor Gas proposes to continue to assess a \$1 monthly account fee to cover the administrative costs of Customer Select. Nicor Gas Ex. D, p. 15-16 (Harms Direct). This charge is not entirely based on specific costs for labor, activities or Staff time. Rather, it is a residual charge, used to recover account-related costs and costs of the program that are not recovered through other charges. ICC Staff Ex. 2.0, Attachment 4 (DLS-11).

Staff objects to recovery through the Account Charge of \$658,600, which is Nicor Gas' projected revenue requirements shortfall in the Customer Select program through 2005 ("unrecovered costs") and \$435,000, which represents annual unassigned costs, and expresses vague concerns about forecasted participation levels. Staff Init. Br. at 36-38.

¹⁰ As explained in Nicor Gas' Initial Brief, p. 29 (footnote 10), if Staff's proposal for a two-step Monthly Group Charge were accepted, the Company recommends that each supplier be limited to a single group. Without this limitation, suppliers could divide groups as they reached the 10,000 level, ensuring that each group is entitled to the lower charge. Moreover, the Company believes that a two-tiered charge would rapidly become irrelevant if Customer Select is expanded to all customers, and if suppliers were limited to a single group. Under those circumstances, most or all suppliers would have over 10,000 customers. Nicor Gas Ex. F, pp. 6-7 (Harms Surrebuttal).

With respect to the \$658,600 in otherwise unrecovered costs, this sum is not even included in the \$1 Account Charge. Rather, \$658,600 is the projected cumulative shortfall in 2005, *assuming* a \$1 Account Charge is in effect. Tr. 98-100, Nicor Gas Ex. D, Schedule AEH-7 (Harms Direct). To recover this shortfall, the Company would continue to impose the \$1 Account Fee past 2005. Tr. 99. Staff's concern that the actual revenue shortfall may be less than projected (Staff Init. Br. at 36-37) is baseless because the Company would simply propose a lower fee after 2005 if the shortfall is less than \$658,600. Tr. 98-99.

The Company's calculation of the Monthly Account Charge is shown in Nicor Gas Ex. E, Rebuttal Schedule AEH-2 (Harms Rebuttal). This calculation includes the revenue shortfall at the end of 2000, forecasted costs and investments not recovered by other Customer Select charges, and an estimate of future Customer Select participation. *Id.*, Nicor Gas Ex. D, pp. 19-24 (Harms Direct), ICC Staff Ex. 2.0, Attachment 4 (DLS-11).

Staff's concern that customer participation levels may exceed the Company's estimate (Staff Init. Br. at 37) provides no basis for disallowing full cost recovery, because actual participation could, in fact, be *less* than projected. If this were the case, the Company would underrecover its costs. Nicor Gas Ex. E, pp. 8-9 (Harms Rebuttal). Just because a forecast is an estimate, and not a guarantee, and could ultimately prove to be wrong, is no basis for arbitrarily disallowing cost recovery. Nicor Gas Ex. F, p. 9 (Harms Rebuttal). In fact, if the possibility of an error in a forecast of costs, customers, or revenues were grounds for denying all cost recovery, no rates or charges would ever be approved.

Moreover, Staff does not identify any alleged flaw in the Company's forecasted costs or participation levels and does not suggest that a different estimate would be more accurate.

Rather, Staff rejects cost recovery simply because some elements are forecasted rather than certain. This position is illogical and unprecedented, and should be rejected.

With respect to the annual sum of \$435,000 in "unassigned" costs, Staff contends that recovery through the Account Charge could result in duplication of recovery collected under Nicor Gas' other tariffs. Staff Init. Br. at 37-38. Staff reasons that because the items "cannot be tied to a specific activity that would fall under the Account Charge," they might be recovered through the Company's other rates. *Id.*, p. 37. This reasoning is seriously flawed.

First, Staff does not identify any rule or standard (and the Company knows of none) that permits recovery only of costs that are directly "tied" to a charge. As Mr. Harms noted, such a rule, if one existed, would deny recovery of construction and maintenance of a gas utility's office in its base rates because those costs are not directly associated with either a customer charge or a distribution charge. Under Staff's logic, a utility could recover office construction and maintenance costs only if it had a line item charge on its bill for "Office Charges." Nicor Gas Ex. F, p. 8 (Harms Surrebuttal).

Contrary to Staff's reasoning, the proper standard for recovery of a cost in this proceeding is whether the cost is incurred because of Customer Select. All of the \$435,000 in annual "unassigned" costs meet this standard, as they involve costs of communications and marketing related to Customer Select, community and governmental relations related to Customer Select (including speakers for community groups and communications with legislative leaders), Customer Select program implementation, auditing of Suppliers, and finance and credit issues related to Suppliers. Nicor Gas Ex. F, pp. 8-9 (Harms Surrebuttal).

Second, Staff's newly invented cost recovery rule appears to be a thinly-veiled attempt to rationalize a reduction in the Account Charge. Staff's Initial Brief (p. 39) explains that, based on

Staff's "evaluation of the associated impact on competition," the Account Charge should be reduced. Staff's "evaluation," however, consists of nothing more than unsupported speculation that the Account Charge "could" have a negative impact on competition and "could inhibit" smaller suppliers from entering the market. Staff Init. Br. at 39; see also ICC Staff Ex. 2.0, p. 34 (Sweatman Direct). Speculation aside, there is no evidentiary support at all for Staff's hypothesis, and it should be rejected.¹¹

Third, as Mr. Harms explained, the Company's actual "break-even" Account Charge through 2005 is \$1.03. Nicor Gas Ex. E, p. 9 and Rebuttal Schedule AEH-2 (Harms Rebuttal). Staff's proposed Account Charge of \$0.88 would assure that the Company would not recover its costs from Customer Select Suppliers or their customers, and should be rejected.

4. The \$10 Group Additions Charge Should be Imposed for each Customer Addition from Another Supplier.

Nicor Gas proposes to continue to apply a \$10 Group Additions Charge whenever a group adds a customer from a different Supplier group. This charge does not apply when Nicor Gas sales customers switch to Customer Select. This charge covers costs associated with processing the change, and related communications and disputes. Nicor Gas Ex. D, p. 15 and Schedule AEH-5 (Harms Direct).

In its Initial Brief, Staff claims that, while the Group Additions Charge is cost-justified (pp. 41, 45), it "is likely to be considered excessive" by Customer Select Suppliers (p. 42) and "may discourage suppliers from actively competing" for small volume customers (p. 46). Staff

¹¹ In fact, Staff witness Mr. Sweatman admitted that he did not even attempt to determine whether the various levels of Account Charges have inhibited Suppliers from participating in Customer Select. Nicor Gas Ex. E, Rebuttal Ex. AEH-4 (DLS-14).

therefore proposes that the switching costs be spread over all customers through a \$0.04 addition to the Monthly Account Charge. Staff Init. Br. at 39, 45-50.

This proposal suffers from a number of flaws, not the least of which is that Staff has not, and cannot, identify one iota of evidence in support of its fundamental premise that the Group Additions Charge inhibits competition. This premise is pure, unsubstantiated speculation. The fact is that the vast majority of eligible customers under the expanded Customer Select program are currently Nicor Gas sales customers and a Supplier adding these customers would not incur *any* Group Additions Charge.¹² Nicor Gas Ex. D, p. 15.

Moreover, Staff's argument relies on overlapping layers of speculation. For example, Staff assumes, without any support at all, that the tax savings that Suppliers have as compared to Nicor Gas will be eliminated. Staff Init. Br. at 48. Staff further relies on a study of supplier margins that is not current, is not in the record, was not produced in response to Company data requests, and does not relate to the Nicor Gas service area. Nicor Gas Ex. F, p. 10 (Harms Surrebuttal); see Staff Init. Br. at 47.

In addition, Staff's proposed reallocation of responsibility for the costs associated with switching Suppliers violates the principle that costs should be borne by the cost-causer. If these costs are spread proportionately among all Customer Select Suppliers through the Account Charge, as Staff proposes, then Suppliers that are actively marketing to existing Customer Select customers are subsidized by Suppliers that are not. Under Staff's proposal, smaller and less

¹² There are currently approximately 114,000 participants in Customer Select. Nicor Gas Ex. D, p. 4. If the program is expanded to all of the Company's customers, almost 2 million customers would be eligible. Nicor Gas Ex. D., p. 6. The Company forecasts that approximately 524,000 customers will participate in Customer Select by the end of 2003. Nicor Gas Ex. D, Schedule AEH-8.

active marketers will bear a disproportionate share of the costs incurred by more active marketers. And assuming, as Staff does (Init. Br. at 46), that Suppliers will pass Group Additions Charge on to their customers, customers who do not switch Suppliers would be subsidizing customers who switch. Nicor Gas Ex. F, p. 10; Nicor Gas Ex. E, p. 12. The Commission should reject this proposed subsidy.

5. The Proposal by GCI and the People to Eliminate all Program Charges is Unlawful and Should Be Rejected.

Overall, Staff agrees with the principle that Nicor Gas is entitled to recover the costs it incurs in implementing Customer Select, and concurs with most of the Company's cost support. See Staff Init. Br. at 17-18. GCI and the People, on the other hand, argue that all of the Customer Select program fees and charges should be eliminated. CUB/Cook Init. Br. at 36-40; the People Init. Br. at 31. This argument is unlawful and baseless and must be rejected.

First, GCI's claims (CUB/Cook County Init. Brief, pp. 36-37) that the program fees exceed the incremental costs associated with the provision of Customer Select, and are not cost based, are incorrect and baseless. In fact, the Customer Select fee structure is objectively cost-based, as it has generated revenues over the past three years that have almost exactly offset the expenses incurred in implementing and operating the program. Nicor Gas Ex. D, pp. 19-20 (Harms Direct).

Second, GCI's argument (CUB/Cook Init. Br. at 36-40) that cost reductions attributable to Customer Select offset the additional costs to be recovered by the program fees and charges is both incorrect and contrary to law. This argument is predicated on GCI witness Mierzwa's erroneous calculation of the amount of storage inventory cost savings to the Company as a result of implementation of Customer Select. Nicor Gas Ex. E, pp. 23-24 (Harms Rebuttal). Mr.

Mierzwa testified that the Company would save \$2.30 per month, later revised to \$1.74 per month, per residential customer in storage inventory carrying costs. GCI Ex. 2.0, p. 14; GCI Ex. 3.0, p. 8. However, the storage inventory cost included in the Company's rates is approximately \$0.26 per month per residential customer. Nicor Gas Ex. E, pp. 23-24.

In any event, and leaving aside legal concerns, it is not appropriate to reduce the Customer Select Monthly Account Charge to reflect any savings due to storage inventory reductions, because there is no way to predict accurately the level of inventory reductions, if any, due to expansion of Customer Select. For one thing, the Company has proposed to permit Suppliers to carry over imbalances between deliveries, storage activity, and use for a longer period than in the past, which will require the Company to increase the amount of gas it holds in storage for the Customer Select program. In addition, since customers may change Suppliers once a month, depending on the timing of customers moving to or from sales service and between Suppliers, the Company's storage inventory could be either positively or negatively impacted. Nicor Gas Ex. E., p. 24.

Further, GCI's claim (GCI Init. Br. at 40) that recovery of Customer Select costs would constitute single issue ratemaking is wrong as a matter of law. The prohibition against single issue ratemaking does not apply to costs recovered under a rider mechanism, such as Rider 16, because those costs have never been included in a utility's rates.¹³ Contrary to GCI's argument, the Supreme Court has specifically held that the rule against single issue ratemaking "does not

¹³ GCI's proposal, in contrast, does implicate the rule against single issue ratemaking because GCI attempts to revisit a single element of the Company's revenue requirement formula (gas storage inventory costs) in isolation. *Citizens Util. Bd. v. Commerce Comm'n*, 166 Ill. 2d 111, 137, 651 N.E.2d 1089, 1102 (1995).

circumscribe the Commission's ability to approve direct recovery of unique costs through a rider when circumstances warrant such treatment." *Citizens Util. Bd.*, 166 Ill. 2d at 138, 651 N.E.2d at 1102 (1995).

6. Summary

For the reasons explained above and in the Company's Init. Br. (pp. 26-32), the Company's proposed Supplier fees and charges are cost-justified and should be approved. Each such charge is less than or equal to the equivalent charge approved by the Commission for Peoples Gas' small volume transportation program, and is less than or equal to the charge that has been in effect under the Customer Select program to date. The continual growth of Customer Select, despite these charges, flatly refutes the parties' unsubstantiated claims that the level of these charges constitutes a competitive barrier. Nicor Gas Ex. E, pp. 13-14 (Harms Rebuttal); Nicor Gas Rebuttal Ex. AEH-4.

B. The Company's Proposed System Operational Controls (Operational Flow Orders) are Reasonable and Equitable, and Should be Approved.

It is undeniable that Nicor Gas is responsible for operation of its gas distribution system, including delivery points, in a manner that ensures reliable, best cost service to all of its customers -- both sales and transportation -- and that meets its contractual obligations with interconnecting pipelines. Among the operational problems that the Nicor Gas system can experience are (1) an overall excessive or inadequate supply of gas relative to system demand and storage requirements, and (2) specific imbalances between the receipt points where gas is delivered from interstate pipelines and system demands. Nicor Gas Ex. A, p. 8 (Gilmore Direct).

To address these operational concerns with respect to Customer Select suppliers, the Company has proposed to add a provision to Rider 16 entitled "System Operational Controls."

This provision would permit the Company to issue an Operational Flow Order ("OFO"), if voluntary actions on the part of suppliers are not sufficient to avert operational problems.

If issued, an OFO could direct a supplier to deliver more or less gas supply than the Required Daily Delivery would otherwise require, limit the volume that Nicor Gas will confirm at certain pipeline interconnect receipt points (while informing suppliers of other available receipt points), and/or restrict or eliminate the Required Daily Delivery Range. Nicor Gas Ex. A, p. 8 (Gilmore Direct). The need for the Company to have the authority to call OFOs and the operation of OFOs are explained in detail in Mr. Gilmore's testimony (Nicor Gas Exs. A (pp. 7-11), B (pp. 3-15) and C (pp. 1-7) and Nicor Gas' Init. Br. (pp. 32-35).

In its Initial Brief, Staff opposes the provision of Rider 16 that permits the Company to issue OFOs. Staff Initial Br. at 51-57. Specifically, Staff claims that OFOs, as proposed by the Company, are discriminatory because (1) they would purportedly place the cost of alleviating operational problems on Customer Select suppliers alone (pp. 51- 55); (2) there is purportedly no "cost support" for the proposed OFO Non-Performance Charge in Rider 16 (p. 55); and (3) there is purportedly no "fundamental difference" between Customer Select customers and other, larger volume transportation customers that justifies different tariff treatment (pp. 55-56). In addition, Staff argues that there is no demonstrated need for OFOs but that if OFOs are required for system reliability, they should be addressed in a separate proceeding and made applicable to all gas suppliers on the Nicor Gas system. Staff Initial Br. at 57. All of Staff's arguments are mistaken and should be rejected.¹⁴

¹⁴ In its Initial Brief, Staff itself appears to have rejected a number of its own arguments against the Company's OFO provisions originally made in Mr. Iannello's testimony. For example, Staff now appears to have abandoned Mr. Iannello's claims that (1) implementation of OFOs through